weakened by the fact that the court seems in part to have rested its decision on the fact that the holder was also the payee. Even this ground, however, seems questionable, for while in many instances the equity of the payee-holder may be inferior to that of the holder who is not a payee, this cannot be stated as an inflexible legal principle. Thus, while it is true that where the check is negotiated to the payee by a stranger, there is something suspicious in the very nature of the transaction,[12] there would be nothing to put the payee on guard where the check was presented by an agent of the drawer and paid to the drawer's use.

The case is also of interest to the student of the doctrine of *Price* v. *Neal* in that it suggests that where the holder has customarily cashed checks for the drawer, he is held to a knowledge of the drawer's signature and cannot shift that duty to the drawee.

The Liability of a Charity for the Negligence of its Servants.

In the case of *Tozeland* v. *Guardians of the Poor of the West Ham Union*,[1] the question of the liability of a charity for the negligence of its servants came before the Court of King's Bench on appeal. The facts were as follows: The plaintiff, an inmate of a workhouse and recipient of poor law relief, was directed to assist at the installation of electric lights in the infirmary under the management of one Byers, the resident electrician. By the English poor law paupers who refused to work when assigned to a job could be brought before a magistrate and committed to jail. At the direction of Byers the plaintiff mounted a scaffold which, being insecurely constructed through the negligence of the electrician, collapsed, injuring the plaintiff, who then sued the guardians of the local union for damages. On appeal, a verdict in favor of the plaintiff was reversed on the ground that the plaintiff in entering the workhouse as an inmate assumed the risk of negligence on the part of the guardians and their employees, or, at least, that the union owed no duty of care to him and hence he could not recover.

Though the rule that one who takes advantage of the benefits offered by a public or private charity cannot recover against it

[12] *Nat. Bank* v. *Bangs* (*supra*), 445.

[1] L. R. (1907), 1 K. B., 920.

for the negligence of its servants (at least if the latter were properly selected) is now pretty well settled, the courts are by no means agreed upon the reason for the rule. Three grounds have been assigned: (1) It is against public policy, which desires to foster charitable work in every possible way;[2] (2) the funds of a charity are trust funds and may not be diverted from the purpose for which they were appropriated;[3] (3) a person entering a charity in fact assumes the risk of any injury that he may receive through the negligence of the charity's servants.[4] At least one of these reasons seems to be bad in theory. As has been pointed out,[5] a trustee is individually liable for torts committed in the management of trust property, and though the trust fund is protected from immediate levy, he can reimburse himself therefrom unless individually at fault. Hence the mere fact that the charity is supported wholly or in part through trust funds should not in itself be a ground for non-liability. Either under this or the public policy theory the result would be the same, whether the injury was to an outsider or one who has accepted the benefit of the charity, and so it has been held.[6] Under the "risk theory," however—and this is the theory of the English case—the charity should be liable to an outsider, since he, having entered into no relations with the institution in question, cannot have assumed any risk. This, indeed, seems to be the law in England—the court in the main case carefully distinguishing as inapplicable the case of *Mersey Dock Trustees* v. *Gibbs*,[7] where a dock company performing public functions was held liable for the negligence of its servants resulting in injury to an outsider. A similar result is suggested in *Powers* v. *Massachusetts Homoeopathic Hospital*,[8] though in that case the injury was to a hospital patient, and hence the remark is mere dicta. It is, however, interesting to note that the few cases which have held that a charity was liable for the negligence of

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[2] *Fordyce* v. *Woman's Christian Library Association*, 96 S. W. 155 (Arkansas, 1906); *Hearns* v. *Waterbury Hospital*, 66 Conn., 98.

[3] *Parks* v. *N. W. University*, 12 Ill. App., 512; *McDonald* v. *Massachusetts General Hospital*, 120 Mass., 432.

[4] *Powers* v. *Massachusetts Homeopathic Hospital*, 47 C. C. A., 122; *Cumier* v. *Dartmouth College*, 105 Fed., 886.

[5] *Powers* v. *Hospital*, 47 C. C. A., at 129.

[6] *Noble* v. *Hahnemann Hospital*, 98 N. Y. Suppl., 605; *Fordyce* v. *Woman's Christian Library Assoc.*, 96 S. W., 155.

[7] (1866) L. R. H. L., 93.

[8] 47 C. C. A., 132.

its servants are all, except the English case cited,[9] cases of injuries to persons obtaining the benefit of a private charity.[10] In the case of charitable institutions supported wholly or in part by the state or a municipality, the American courts have uniformly denied liability.[11] It would seem, then, that the principal case is in accord with all the authorities in its facts, but becomes an intensely interesting one by reason of its dicta denying the applicability of the rule to the case of injury to an outsider.

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[9] *Mersey Docks Trustees* v. *Gibbs* (1866) L. R. 1, H. L. 93.

[10] *Donaldson* v. *General Public Hospital*, 30 New Brunswick, 279; *Hewett* v. *Woman's Hospital Assoc.*, 73 N. H., 556. The case of *Glavin* v. *Rhode Island Hospital*, 12 R. I., 411, holding that a hospital is liable for negligence of its doctor, resulting in injury to a patient, has been overruled by statute in Rhode Island. The case could hardly be considered as *contra*, however, since the decision is largely based on the fact that due care was not exercised in the selection of the doctor in question. In accordance with this last proposition there is an abundance of dicta: (*Van Tassel* v. *Manhattan Hospital*, 15 N. Y. Supp., 620; *Wilson* v. *Brooklyn Homeopathic Hospital*, 89 N. Y. Supp., 619).

[11] *Penn* v. *House of Refuge*, 63 Md., 20; *Ford* v. *School District*, 121 Pa., 543; *Maia* v. *State Hospital*, 97 Va., 507; *Peasley* v. *Poor District*, 26 Pa. Co., 428; *Corbett* v. *Industrial School*, 177 N. Y., 16; *White* v. *Hospital*, 138 Ala., 479. (The suit in all these cases was, however, by an employee or a person receiving the benefit of the institution.)